

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEREMY WILLIAMS,
 Plaintiff,

v.

SUNRISE HOSPITAL, et al.,
 Defendants.

Case No.: 2:19-cv-01432-APG-NJK

REPORT AND RECOMMENDATION

The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

On November 6, 2019, the Court dismissed Plaintiff’s complaint, alleging violations of the Eighth and Fourteenth Amendments, with leave to amend. Docket No. 3. *See also* Docket No. 1-1. Plaintiff’s amended complaint appears to bring a single claim for wrongful death. Docket No. 5.¹ Plaintiff does not purport to bring a claim arising under federal law, nor is there any showing that diversity jurisdiction exists in this case. *See* 28 U.S.C. §§ 1331, 1332. Hence, Plaintiff does not establish this Court’s subject matter jurisdiction. Moreover, Plaintiff has already had the

¹ As Plaintiff is proceeding *pro se*, the Court construes his arguments liberally. *See, e.g.*, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 opportunity to amend his complaint for lack of subject matter jurisdiction and has been unable to
2 cure the deficiencies.

3 As the Court is lacking subject matter jurisdiction, the undersigned **RECOMMENDS** that
4 the case be **DISMISSED** without prejudice to Plaintiff seeking relief in state court.

5 Dated: April 17, 2020.

6 
7 Nancy J. Koppe
8 United States Magistrate Judge

9 **NOTICE**

10 This report and recommendation is submitted to the United States District Judge assigned
11 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
12 recommendation must file a written objection supported by points and authorities within fourteen
13 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
14 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
15 F.2d 1153, 1157 (9th Cir. 1991).